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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) GC Docket No. 92-52
)
Reexamination of the Policy)
Statement on Comparative)
Broadcast Hearings)

To: The Commission

REPLY COMMENTS OF SUSAN M. BECHTEL

1. We have reviewed the comments filed by other parties, and still have not found any "integration success story" as that concept has been used in the opening brief and reply brief of Mrs. Bechtel filed with the Court of Appeals in the matter of Commission action upon remand of Bechtel v. FCC, 957 F.2d 873 (D.C.Cir. 1992), submitted with our comments in this proceeding filed October 13, 1993.

2. One party, Reed Smith Shaw & McClay, in a footnote on page 15, makes a cryptic nonanalytical reference to three cases which it says are "the real answer to the Court in Bechtel." With such magnificent billing, these cases merit some analysis.

3. We shall start with a case is that is cited only as Flint Metro Mass Media, Inc., which presumably is a case that may be found under the name Flint Family Radio, Inc. in various volumes of the FCC and Pike & Fischer Reports, including a decision in 1977 by the Review Board reported at 69 FCC2d 38 and 41 RR2d 1155. There are several reasons why this is not an "integration success story":

(a) Reed Smith Shaw & McClay do not report that the case was settled and never went to a final decision in favor of a

party proposing integration as the basis for that decision. The prevailing applicant in the Review Board's decision was an entity called Flint Metro Mass Media, Inc., whose 28% stockholder, Vernon Merritt, Jr., received integration credit for his proposal to serve as the General Manager, the Sales Manager and the Chief Engineer. 41 RR2d at 1158-59, 1167-68 (¶¶4-5, 20). This was in 1977. The comparative case remained pending before the Commission for a couple more years and in 1979 it was settled by agreement of the parties (see FCC record entry attached as Exhibit 1). This was long before the Commission adopted a rule requiring parties to settlements to adhere to their integration commitments. 47 C.F.R. §73.1620(g); Proposals to Reform the Commission's Comparative Hearing Process to Expedite Resolution of Cases, 6 FCC Rcd. 157, 160 (1990), clarified, 6 FCC Rcd. 3403 (1991).

(b) Accordingly, Mr. Merritt was not required to carry out his integration commitment -- at all -- or in the manner as made to the Commission -- nor, apparently, did he. For one thing, according to the Commission's ownership reports for the station in question, call letters WDZZ(FM), Flint, Michigan, from the very outset Mr. Merritt owned 100% of the stock of the station, not 28%, eliminating four other stockholders whose more limited participation in station affairs and their civic background had been mentioned in the Review Board's decision along with Mr. Merritt's full time integration. 41 RR2d at 1158 (¶4). For another thing, if the station's reports to Broadcasting Yearbook,

a respected and widely used industry resource, are accurate, and there is no discernible reason why they shouldn't be accurate on this score, from the outset Mr. Merritt served as the general manager of the station but not as its sales manager (one Robert O'Bannion) or its chief engineer (one Larry Hilton). See Broadcasting Yearbook, 1980 edition, also subsequent additions to and including the 1985 edition.

(c) From our review of the Commission's ownership records and Broadcasting Yearbook, Mr. Merritt appeared to have owned and managed the station for a number of years, from commencement of operation in September 1979 until 1985 or perhaps 1988. Mr. Merritt had previously had "considerable broadcast experience" according to the Review Board's decision. 41 RR2d at 1158 (¶4). He became a group owner subsequent to his activation of the Flint FM station, according to the Commission's ownership records, acquiring a companion AM radio station in Flint, call letters WFDF(AM), and an FM station in Des Plaines, Illinois, call letters WTWV(FM). The Commission's ownership records also contain documents reflecting that Mr. Merritt secured his own debt financing from the Heller-Oak Financing Corporation, then headquartered in Chicago. An experienced broadcaster, securing his or her own financing, is precisely the kind of applicant that we have suggested should be encouraged under the integration factor if that factor is to make any sense; yet, prior broadcast experience is given very limited weight and group ownership of other stations is the kiss of death under the integration factor

as it has been applied by the Commission, thus discouraging most veteran broadcasters from engaging in the comparative hearing process. See our opening brief in the Court of Appeals appended to our comments filed October 13, 1993, at 43-47.

4. Another case cited by Reed Smith Shaw & McClay in its cryptic unanalytical footnote as "the real answer to the Court in Bechtel" is V.O.B., Inc., 5 FCC Rcd. 5872, 68 RR2d 652 (Rev.Bd. 1990). There are reasons why this is not an "integration success story" either:

(a) As in the case of Mr. Merritt, Reed Smith Shaw & McClay do not report that V.O.B., Inc. was settled prior to final decision on the merits based upon a party's integration proposal. Such settlement was approved by Order of the General Counsel adopted November 6, 1990, released December 4, 1990 (attached as Exhibit 2, although the document apparently has transposed the adoption and release dates). This Order, thus, preceeded the adoption (December 13, 1990), release (December 21, 1990) and effective date (April 10, 1991) of the rule requiring parties to settlements to carry out their integration commitments referred to supra. Accordingly, there has been no FCC requirement that the settling party carry out its integration proposals -- at all -- or in the manner as proposed to the Commission.

(b) The prevailing applicant in the settlement, which also was the prevailing applicant in the Review Board's decision, proposed to integrate Steven Van Oort and his wife, Darlene, then living in the Detroit area, with plans to move to the location of

the FM station in question, Ankeny, Iowa, the boyhood home of Mr. Van Oort. Each owned approximately 19% of the equity of the applicant. Mr. Van Oort was proposed to serve as the general manager; Mrs. Van Oort was proposed to serve as assistant general manager with other duties as well. Both of them had prior broadcast experience; in the case of Mr. Van Oort, such experience was described by the Review Board as "extensive." Among other things he served as Program Director, then as Program Director and Operations Manager, then as Station Manager of major market radio stations in Detroit for a period of nearly 20 years. V.O.B., Inc., 5 FCC Rcd. 1285, 1285-87 (Judge Frysiak 1990), 5 FCC Rcd. 5872, 68 RR2d 652 (Rev.Bd. 1990). As in the case of Mr. Merritt, Mr. and Mrs. Van Oort represent the very kind of veteran broadcasters who can make an integrated ownership-management scenario work if they are using funds for which they are responsible to construct and operate the station in question.¹


5. The third case cited by Reed Smith Shaw & McClay in its cryptic unanalytical footnote as the "real answer to the Court in Bechtel" is an application of Jane E. Newman for a new FM station in Hampton, New Hampshire. Well, not quite. This case, like the cases of Mr. Merritt and Mr. and Mrs. Van Oort, was settled and did not result in the selection of a station owner from any

¹ As best we can determine from the Commission records, the Ankeny, Iowa station, call letters KXMD, has been on the air since in or about April 1992 and, accepting the statement of Reed Smith Shaw & McClay that Mr. and Mrs. Van Oort remain there to this date operating the station, this ownership-management operation by veteran broadcasters has been in place for about a year and a half now.

application of the Commission's integration policy to any ownership-management integration proposal. Indeed, it is even less of a test of the efficacy of the integration factor than the cases of Mr. Merritt and Mr. and Mrs. Van Oort since there is no evidentiary record, tested under cross examination and rebuttal evidence, evaluated or adjudicated by any judge or reviewing authority, by which to measure the nature of the integration commitment, the financing of the applicant, the applicant's broadcast knowledge or other essential information. This is so since there was no decision at any level of the Commission relating to this application. The settlement was entered into and approved by the Administrative Law Judge, Judge Gonzalez (Memorandum Opinion and Order released June 24, 1991, attached as Exhibit 3), before any initial decision had been rendered by him or any decision by the Review Board or the full Commission. This settlement occurred subsequent to the effective date of the Commission rule requiring parties to settlements to fulfill their integration commitments for a period of one year after commencement of operation, and accordingly, the on-site management of the station by Ms. Newman, as represented by Clay Smith Shaw & McClay, has been under the gun of the FCC one-year requirement.²

² It is too early to tell if the ownership-management of Ms. Newman will continue well beyond the first year so as to constitute integration in some long-term meaningful sense as envisioned by the Commission when it adopted the integration factor as a policy in 1965 and as would be required for the integration factor to have any valid and significant impact on the public interest. As best we can determine from the Commission's records, this station, call

Respectfully submitted,



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October 28, 1993

letters WZEA, commenced operation in or about August 1992, and thus has been in operation for a little over a year as of this writing.

EXHIBIT 1

The following are summaries of Commission actions that are not printed in full, March 31, 1979 - July 5, 1979.

Assignments & Transfer

Application for voluntary assignment of the license of AM Station WAIT, Chicago, Ill., from WAIT Radio to Century Chicago B/cing, Ltd., granted. Petition to deny application filed by CCOM, denied. May 2, 1979.

Application to assign the license of FM Station KFMR, Fremont, Ca., from Alameda B/cing, Inc., to Robert L. Williams, Inc. and James E. Coyle, d/b/a Spanish Metro, granted. May 2, 1979.

Applications to assign Stations KMPX(FM), KEAR(FM), KCBS-FM of San Francisco to Family Stations, Inc., CBS, Inc. and Golden Gate Radio, Inc., respectively. July 27, 1979.

Aural Matters

Application of Millard V. Oakley for new AM b/c station in Dayton, Tenn. granted, and informal objection by Norman A. Thomas, WDNT denied. March 30, 1979.

Application for subsidiary communications authorization by Street B/cing Corp., licensee of WIZR-FM, New York, granted. May 10, 1979.

Application of Subsidiary Communications. (WOQL-FM,) change transmitter cite and for waiver of the shortspacing rules (Sec. 73.213(f)), denied. May 31, 1979.

Broadcast Matters

Closed-circuit Test of Emergency Broadcast System is scheduled for April 24, 1979. April 18, 1979.

Application of Sonderling B/cing Corp. for renewal of radio station WOL, Washington, D.C., designated for hearing. May 10, 1979.

Public Notice Revising Financial Standards for Television, adopted. May 10, 1979.

Settlement agreement between Flint Family Radio, Inc. and Flint Metro Mass Media, Inc., both of Flint, Michigan, is approved whereby one of two mutually exclusive CPs is withdrawn, the other is granted and partial reimbursement for expenses is made by the grantee to the withdrawn applicant. May 2, 1979.

Request by Telegraph-Herald, Inc. for waiver of Sec. 17-23 of Rules granted repainting of the radio tower of station KFMD, Dubuque, Iowa. May 2, 1979.

Commission adopts the composite week dates for commercial radio licensees for program log analysis for licenses that expire in calendar year 1980. June 4, 1979.

Application for CP for new Class A FM b/cast station granted to Communico Honi Corp., Waiakoa, Maui, Hwa., and Sec. 73.211 of Rules (maximum power) is waived. May 29, 1979.

EXHIBIT 2

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 90I-128
Washington, D.C. 20554 1292

In re Applications of)	MM Docket No. 88-522
)	
V.O.B. INCORPORATED)	File No. BPH-871102MH
)	
Stephanie Hermann d/b/a)	
DICK BROADCASTING, LTD.)	File No. BPH-871104MD
)	
WILLIAM B. ROTH)	File No. BPH-871104MG
)	
For Construction Permit for a)	
New FM Station on Channel 292A)	
at Ankeny, Iowa)	

O R D E R

Adopted: December 4, 1990; Released: November 6, 1990

1. In a Decision, V.O.B. Incorporated, 5 FCC Rcd 5872 (1990), the Review Board granted V.O.B. Incorporated's application for a new FM Station at Ankeny, Iowa. Now before the Commission are Joint Requests for Approval of Settlement Agreements filed November 16, 1990 by V.O.B. and Dick Broadcasting, Ltd., and by V.O.B. and William B. Roth; and Comments filed December 3, 1990 by the Mass Media Bureau. Also before the Commission is a Consent Motion for Suspension of Procedural Dates filed November 19, 1990 by Dick.

2. The Settlement agreements provide for the grant of V.O.B.'s application and the dismissal of Dick's and Roth's applications. Under the terms of the agreements, V.O.B. will pay \$30,000 to Dick and \$5,000 to Roth. The joint requests comply with the provisions of 47 U.S.C. § 311(c) and 47 C.F.R. § 73.3525 which govern settlement agreements. V.O.B., Dick and Roth have submitted copies of the settlement agreements and declarations under penalty of perjury certifying that there is no undisclosed consideration and that their applications were not filed for the purpose of negotiating a settlement. It further appears that the settlements will serve the public interest by terminating this hearing proceeding and expediting the institution of a new FM service in Ankeny, Iowa.

3. ACCORDINGLY, IT IS ORDERED, That pursuant to the delegation of authority in 47 C.F.R. §0.251(f), the Joint Requests for Approval of Settlement Agreements filed November 16, 1990 by V.O.B. Incorporated and Stephanie Hermann d/b/a/ as Dick Broadcasting, Ltd., and V.O.B. Incorporated and William B. Roth ARE GRANTED; that the attached settlement agreements ARE APPROVED; that the applications filed by Stephanie Hermann d/b/a Dick Broadcasting, Ltd. (File No. BPH-871104MD) and William B. Roth (File No. BPH-871104MG) ARE DISMISSED; and that the application filed by V.O.B. Incorporated (File No. BPH-871102MH) IS GRANTED.

4. IT IS FURTHER ORDERED, That the Consent Motion for Suspension of Procedural Dates, filed November 19, 1990 by Stephanie Hermann d/b/a Dick Broadcasting, Ltd. IS DISMISSED.

Robert L. Pettit
General Counsel

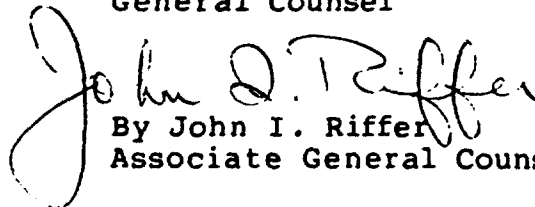

By John I. Riffer
Associate General Counsel

EXHIBIT 3

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-1974
5045

In re Applications of)	MM DOCKET NO. 90-272
)	
CARLYN RING)	File No. BPH-880505MG
)	
STARBOARD PRODUCTIONS)	File No. BPH-880505MI
)	
HAMPTON BROADCASTING)	File No. BPH-880505OH
)	
JANE E. NEWMAN)	File No. BPH-880505OY
)	
For Construction Permit for a)	
New FM Station on Channel 271A)	
in Hampton, New Hampshire)	

MEMORANDUM OPINION AND ORDER

Issued: June 21, 1991; Released: June 24, 1991


Under consideration is the Joint Request for Approval of Settlement Agreements filed by Jane E. Newman (Newman), Hampton Broadcasting (Hampton), Carlyn Ring (Ring) and Starboard Productions (Starboard) on April 30, 1991; and the Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreements filed on May 15, 1991.

Petitioners seek approval of settlement agreements which provide, in pertinent part, for the dismissal of the Ring, Hampton and Starboard applications in return for monetary consideration from Newman in the amounts of \$48,000.00 to Hampton, \$12,000.00 to Ring and \$15,000.00 to Starboard and for the grant of the Newman application. The Commission's Mass Media Bureau supports the request.

The Parties are in substantial compliance with the requirements of Section 73.3525 of the Commission's Rules. In addition, the Parties to the various agreements attest that their applications were not filed for the purpose of reaching or carrying out a settlement. The Presiding Judge further finds that approval of the various settlement agreements would be in the public interest since it would conserve the resources of the Commission and the applicants by obviating the need for a comparative hearing, and result in the earlier institution of a new FM service in Hampton, New Hampshire. Accordingly, the joint petition will be granted, and the settlement agreements approved.

Good cause having been shown, IT IS ORDERED that the Joint Request for Approval of Settlement Agreements filed by Jane E. Newman, Hampton Broadcasting, Carlyn Ring, and Starboard Productions on April 30, 1991 ARE APPROVED; that the applications of Carlyn Ring (File No. BPH-880505MG), Starboard Productions (File No. BPH-880505MI), and Hampton Broadcasting (File No. BPH-880505OH) ARE DISMISSED with prejudice; that the application of Jane E. Newman for a new FM station on channel 271A (102.1 MHz) in Hampton, New Hampshire (File No. BPH-880505OY) IS GRANTED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Joseph P. Gonzalez
Administrative Law Judge